

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**FRANCISCO JAVIER CRUZ-GUZMAN,**

**Defendant.**

**CASE NO. 8:06CR389**

# MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation (Filing No. 63) issued by Magistrate Judge F.A. Gossett recommending denial of the Defendant's motion to suppress (Filing No. 47). No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. Because Judge Gossett fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety.

The motion to suppress was filed on February 6, 2007. (Filing No. 47.) The Defendant requested that a change of plea hearing be scheduled, and he failed to appear for his plea hearing. (Filing Nos. 55, 56, 57.) A warrant was issued on April 17, 2007.<sup>1</sup> The government then filed a superseding Indictment. (Filing No. 58.) Judge Gossett suggests that the motion to suppress was abandoned under the fugitive disentitlement doctrine. *See Hassan v. Gonzales*, 484 F.3d 513, 516 (8<sup>th</sup> Cir. 2007).

<sup>1</sup>Although the docket reflects that the warrant was executed (Filing No. 62), the Court has been advised that the individual apprehended is not the Defendant.

There are no objections to the Report and Recommendation, and it appears that this is an appropriate situation for the application of the fugitive disentitlement doctrine.

Therefore,

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 63) is adopted in its entirety; and
2. The Defendant's motion to suppress (Filing No. 47) is denied without prejudice.

DATED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge